

U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

PUBLIC COPY

ADMINISTRATIVE APPEALS OFFICE

425 Eye Street N.W.

BCIS, AAO, 20 MASS, 3/F

Washington, D.C. 20536

File: WAC 01 151 52822

Office: CALIFORNIA SERVICE CENTER

Date:

MAY 14 2003

IN RE: Petitioner:

Beneficiary:

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann
for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Acting Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks classification of the beneficiary as a special immigrant minister pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), in order to employ him as a minister at a monthly salary of \$2,100.

The acting director denied the petition, finding that the petitioner failed to establish that the beneficiary had been performing full-time work continuously as the proffered position for the two-year period immediately preceding the filing of the petition.

On appeal, the Senior Pastor of the petitioning church states that: "[the beneficiary] has been ministering his religious vocation since the date of his ordination [January 16, 1996] continuously without interruption . . . in Russia and since his entry to the United States in May 1999 in our Church."

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- (III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The petitioner in this matter is a church incorporated in 1997. The beneficiary is a citizen of Russia. The petitioner claims that the beneficiary last entered the United States on May 4, 1999 without inspection. According to the Bureau's database, the beneficiary entered the United States on November 24, 1996 as a nonimmigrant visitor for business (B-1) with authorization to stay in the country until December 23, 1996.¹

In order to establish eligibility for classification as a special immigrant minister, the petitioner must satisfy several eligibility requirements.

The first issue to be addressed in this proceeding is whether the beneficiary was continuously carrying on the vocation of a minister for at least the two years preceding the filing of the petition.

8 C.F.R. § 204.5(m) (1) states, in pertinent part, that:

All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition.

In the case of special immigrant ministers, the alien must have been engaged *solely* as a minister of the religious denomination for the two-year period in order to qualify for the benefit sought and must intend to be engaged solely in the work of a minister of religion in the United States. *Matter of Faith Assembly Church*, 19 I&N 391 (Comm. 1986).

The petition was filed on March 22, 2001. Therefore, the petitioner must establish that the beneficiary had been continuously and solely carrying on the vocation of a minister of religion since at least March 22, 1999.

In this case, an official of the petitioning church testified that the beneficiary had been ministering since the date of his ordination (January 16, 1996) in Russia and since his entry into the United States in May 1999 at the petitioning church. The petitioner indicated that the beneficiary was not paid a salary but rather was given "full care and maintenance."

Noting that the prior experience must have been full-time salaried employment in order to qualify, the director found that the

¹ According to the petition, the beneficiary has a child who was born in the United States on November 17, 1997.

evidence was insufficient to establish that the beneficiary had been performing full-time work continuously in the proffered position for the two-year period immediately preceding the filing of the petition. The AAO concurs.

In this case, the petitioner did not provide a detailed description of the beneficiary's means of financial support in this country. Absent a detailed description of the beneficiary's employment history in the United States, supported by corroborating evidence such as certified tax documents, the Bureau is unable to conclude that the beneficiary had been engaged in any particular occupation, religious or otherwise, during the two-year qualifying period.

Furthermore, the petitioner made no claim and submitted no evidence that the beneficiary had been engaged "solely" as a minister of religion during the two-year period or that he would be solely engaged as a minister with the petitioning church. For this reason as well, the petition may not be approved.

Beyond the decision of the director, the petitioner has not provided sufficient evidence to demonstrate that the beneficiary is qualified as a minister as defined at 8 C.F.R. § 204.5(m)(2). See also *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978) (ordination is not conclusive as to who qualifies as a minister for purposes of the Act).

Another issue beyond the decision of the director is whether the petitioner demonstrated its ability to pay the proffered wage as required by 8 C.F.R. § 204.5(g)(2). The petitioner failed to provide any financial documentation. For this additional reason, the petition may not be approved.

Since the appeal will be dismissed for the reasons stated above, these issues need not be examined further.

The petitioner bears the burden to establish eligibility for the benefit sought. In reviewing an immigrant visa petition, the Bureau must consider the extent of documentation and the credibility of that documentation as a whole. The petitioner bears the burden of proof in an employment-based visa petition to establish that it will employ the alien in the manner stated. See *Matter of Izdebska*, 12 I&N Dec. 54 (Reg. Comm. 1966); *Matter of Semerjian*, 11 I&N Dec. 751 (Reg. Comm. 1966).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.